

REMARKS

This amendment is submitted in full response to the outstanding Office Action dated September 30, 2002, wherein original claims 1 through 20 stand rejected. More specifically, claims 1, 4 through 8, 13 through 15, 18 and 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by Guggenheim (U.S. Patent No. 4,948,154). Also, claims 2 and 3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Guggenheim. In addition, claims 9, 10 and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable under Guggenheim in view of Dismuke (U.S. Patent No. 5,195,778). Finally, claims 11 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Guggenheim in view of Dismuke and further in view of Haberkorn (U.S. Patent No. 6,196,287).

In addition to the above claim 3 stands rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which is not described in the specification and claim 5 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Also claims 1, 7 and 11 are objected to because of certain informalities set forth in detail by the Examiner on page 3, paragraph 4 of the outstanding office action.

Applicant wishes to thank the Examiner for his conscientious review of this application. In response, and as set forth in greater detail hereinafter, the above noted claims have been amended and new claims 21 through 24 have been added in order to define Applicants invention in a manner which is clearly distinguishable from the references of record.

Before addressing the substantive issues of the Examiners rejections under 35 U.S.C. sections 102, 103 and 112, Applicant wishes to take note of objections to the specifications as outlined in detail on paragraphs 1 through 3 of page 2 of the outstanding Office Action. More specifically, the Abstract and the language of the specification has been amended to overcome any inconsistencies and informalities of the type indicated by the Examiner as being objectionable. Care was taken not to add any new subject matter.

In addition to the above the specification is objected to under 37 C.F.R. 1.71 because of the Examiner's contention that it fails to provide an adequate written description of the invention. The Examiner makes specific reference to the various instances in the specification where the term "hyper-allergenic" material was used. As the Examiner correctly indicates there is no apparent reason for the use of a material in the cover assembly of Applicants invention which is prone to promote excessive allergic reactions as would be suggested by the use of "hyper-allergenic" material.

Accordingly, this response includes an amendment of the specification to change the term "hyper-allergenic" to the correct and originally intended term "hypo-allergenic" material. Applicant specifically states that the use of the prefix "hyper" in describing the material from which the cover assembly is formed was a result of a "scrivener's error". Clearly the correct term "hypo-allergenic" material should have been used to accurately describe the material from which the subject cover assembly is made. Foundation and antecedent basis for describing the cover assembly

material as "hypo-allergenic" is found in the specification on pages 5 and 6, beginning on line 22 of page 5. More specifically, the cover assembly is therein described as being formed from a flexible yet relatively strong and substantially protective material made from a material which facilitates the maintenance of a sterile environment on the interior of the enclosure. The specification further states that the preferred material from which the enclosure of the cart assembly is formed may be of the type commercially available under the trademark "STAPH-CHEK™", registered in the U.S. Patent and Trademark Office under Registration No. 802,786 and which is manufactured by Herculite Product, Inc., a corporation of New York with offices in New York City and possibly Newark, New Jersey. For purposes of clarity Applicant further submits Exhibit 1, comprising a photocopy of an informative label clearly indicating that the material "STAPH-CHEK™" is in fact a protective material having antibacterial qualities. As such the preferred protective material is considered to be hypo-allergenic.

Based on the above, the amendment to the specification is believed to be appropriate in that changing of the term from "hyper-allergenic" to "hypo-allergenic" amounts to the correcting of the aforementioned scrivener's error and does not constitute the inclusion of new subject matter. In addition, claim 3 has been cancelled and the descriptive term "hypo-allergenic" now appears in certain new and amended claims of this application, as discussed in detail hereinafter.

Applicant's Claimed Invention

Applicants invention as now defined in the claims appearing in the application by virtue of this amendment is directed to a cover assembly for a cart comprising an enclosure including a hollow interior dimensioned and configured to receive the cart therein. The enclosure includes a top and a sidewall disposed in overlying relation to an upper portion of the cart and to a plurality of sides thereof. An access opening is formed to provide access to the contents of the cart and a closure structure is selectively positionable between a closed position and an open position relative to the access opening. In addition, amended independent claim 1 and the remaining claims dependant thereon, define the enclosure being formed from a hypo-allergenic material so as to facilitate maintenance of a sterile environment within the hollow interior of the enclosure in which the contents of the cart are disposed.

Also, the claimed invention comprises a storage assembly including at least a first compartment mounted within the hollow interior, wherein the first compartment is disposed and structured to isolate the contents of the first compartment from the cart and a remainder of the hollow interior of the enclosure. The Examiners attention is directed to the specification the paragraph beginning on page 17 at line 18. As described in detail therein, a first compartment 50 is disposed within the hollow interior of the enclosure so as to maintain specialized or predetermined garments or items in a completely isolated location and therefore in a

thoroughly sterile environment, relative to the remainder of the interior of the enclosure and particularly, in isolated relation to the cart and the contents thereof.

Additional structural features of the cover assembly of the Applicants invention comprise a reinforcement assembly including a plurality of reinforced portions connected to the enclosure at spaced apart locations. The reinforcement assembly is more specifically defined in independent claim 20, as well as other dependant claims still remaining in the application, as including a plurality of corner pads formed on the top of the enclosure in overlying, substantially covering relation to corner portions of the upper portion of the cart. The plurality of the reinforced portions also includes an elongated peripheral seam extending continuously along an exterior of the enclosure in contiguous relation to a commonly disposed peripheral junction of a side wall and the top of the enclosure.

Section 102 and 103 Issues

The reference of records to Guggenheim is a basis of the Examiners rejection under 35 U.S.C. §102 for original claims 1, 4 through 8, 13 through 15, 18 and 19. In addition the Examiner contends that claims 2 and 3 recite obvious subject matter and are therefore unpatentable under 35 U.S.C. §103(a) in light of Guggenheim. The Guggenheim reference is directed to a cover for enclosing a cart which is intended for the storage of sterilized, packaged material. As such, the interior of the cart need not comprise a sterile environment since the contents are packaged. In

light of the Examiner's statement on page 4, paragraph 8, the cover of Guggenheim includes portions which may be constructed from a vinyl material which is "mildly hyper allergenic". Accordingly, the Guggenheim reference teaches away from an enclosure formed from a hypo-allergenic material.

A through review of Guggenheim further indicates that it is absent any type of storage assembly, particularly in the form of at least one compartment or pocket disposed on the interior of the cover and structured to isolate the contents of the first compartment from the hollow interior of the cover and the cart which the cover encloses. It is further noted that Guggenheim is absent a reinforcement assembly which specifically includes corner portions formed on the top of the cover in overlying, covering relation to an upper portion of the cart so as to provide protection therefore as claimed and outlined in detail in the specification of the subject application.

In applying the Guggenheim reference, the Examiner recognizes the deficiencies therein as failing to teach first and second compartments to retain items. The Examiner therefore combines Guggenheim with the reference of record to Dismuke. It is the Examiners contention that Dismuke teaches a flexible covering device which includes a plurality of compartments for accommodating items associated with the use of the covering device. However, it is clear that the Dismuke patent discloses a car utility apron designed to surround the exterior portions of the car to facilitate a mechanic working thereon. As such Dismuke's car utility apron discloses a plurality of different pockets all of which are located

on the exterior of the apron so as to provide ready access to the contents thereof to the user of the apron.

It is important to note that the utility apron of the Dismuke reference is specifically intended for use when working on an automobile and therefore is clearly not intended to facilitate the maintenance of a sterile environment. Therefore the combination of Guggenheim and Dismuke is questioned as being a hindsight teaching of Applicants invention. Further Dismuke specifically teaches away from a compartment located on an interior of an enclosure since the interior surfaces of the Dismuke apron are all disposed in confronting relation with the exterior surfaces of the vehicle.

The locating of a compartment or pocket on the interior of the Dismuke apron would render such interior pocket useless since access thereto would be denied. Accordingly the combination of Dismuke and Guggenheim teach away from Applicants recited structure of a storage assembly including at least one interior compartment located within the hollow interior of an enclosure and being structured to facilitate the sterile environment of the contents of the first compartment by effectively isolating it from the remainder of the hollow interior of the enclosure as well as from the cart or other structure which it incloses.

Original claims 11 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Guggenheim in view of Dismuke and further in view of Haberkorn. The Examiner recognizes that the Guggenheim and Dismuke combination fail to teach the compartment connected to the exterior of a covering which includes a transparent

window. Applicant acknowledges that Haberkorn discloses flexible covering device which includes a transparent, windowed compartment 40. However, Haberkorn does not overcome the above stated deficiencies of either the Guggenheim or Dismuke patents, or a combination thereof. More specifically neither Guggenheim, Dismuke or Haberkorn disclose an enclosure formed of a hypo-allergenic material, which includes a storage assembly having at least one interior compartment disposed and structured to facilitate maintenance of a sterile environment. These references also fail to disclose a reinforcement assembly including corner portions and a continuous exteriorly disposed seam structured to provide protection to the enclosure in the manner set forth in detail in the specification of the subject application.

Finally, the Examiner relies on Guggenheim in view of the reference of record of Foster. While the Examiner recognizes that Guggenheim fails to teach the periphery of the top as including pads which protect at least the corners of the top, the examiner contends that Foster includes a cover having a top and side provided with a pad for protection. A review of the Foster patent indicates that a padded strip 24 is disposed within the **peripheral** channel 18 and extends about the periphery of a table on which the cover is intended to protect. While it is recognized that the pad 24 may extend minimally above the level of the cover member 12, a thorough review of the Foster patent indicates that the pad 24 is located in a position which clearly does not protect the corner portions thereof and accordingly which does not define a plurality of corner

pads. Foster is also absent a continuously extending seam located between the junction of the top and side walls of the enclosure, as now defined in the claims of Applicant's.

Applicant agrees with the Examiner that the remaining references of record which were not specifically applied are of secondary interest only when considered either singularly, in combination with one another or in combination with the specifically applied references.

Conclusion

Based on the above Applicant contends that the amended and newly submitted claims remaining in the is application define structural features of an enclosure which are not anticipated or rendered obvious by any of the references of record whether considered either singularly or in combination with one another. Based on the above amendments and remarks reconsideration of this application is hereby requested. It is believed that this application is now in condition for allowance and such action is respectfully requested.

A request for an appropriate extension of time is enclosed herewith along with the corresponding PTO fee.

In the event that any filing fee may be required by the filing of this paper, The Commissioner is hereby authorized to charge any fees and/or credit to our **Deposit Account No. 13-1227**.

In addition to the above and in accordance with the 37 C.F.R. 1.121, attached hereto is a marked-up version of the changes made

to the claims by the current Amendment, which is captioned "Version with Markings to Show Changes Made."

Respectfully submitted,

MALLOY & MALLOY, P.A.
Attorneys for Applicant
2800 S.W. Third Avenue
Historic Coral Way
Miami, Florida 33129
(305) 858-8000

By: 

Peter A. Matos
Reg. No. 37,884
Jennie S. Malloy
Reg. No. 37,670

Dated: 1-30-03

Applicant: Tomiko Erickson
Serial No.: 09/886,660
Filing Date: June 21, 2001
For: COVER ASSEMBLY FOR HOSPITAL CARTS

Group Art Unit 3618
Vanaman, F.B., Examiner

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the specification:

The paragraph beginning at line 11 of page 1 has been amended as follows:

--This invention relates to a protective cover assembly primarily designed to enclosed a mobile delivery cart of the type used for the distribution of a variety of items, at least some of which should be maintained in an at least partially sterile environment, such as items used in hospitals or like medical facilities. The cover assembly includes an enclosure formed of flexible, preferably [hyper]hypo-allergenic material which, when expanded into an operative position, substantially surrounds and encloses the cart as well as its contents, thereby facilitating the maintenance of the preferred sterile environment.--

The paragraph beginning at line 23 of page 3 has been amended as follows:

--During the time it takes to deliver the variety of items or products contained on such delivery carts, it is desirable to maintain, at least as much as practical, a substantially sterile environment for the storage of such items as they travel along the

aforementioned delivery route. This is particularly true in hospitals and the like where some germs, bacteria and infectious diseases may be carried in and transmitted by contact with the air. In that delivery carts of the type used in hospitals normally are "open", to the extent that one or more sides of the cart comprise a plurality of openings to facilitate ready access to the products being delivered, there is a recognized need for some type of cover dimensioned and configured to somewhat protect the delivery cart as well as the contents therein. It would be beneficial if a cover were developed that could effectively isolate the contents of the cart and, as much as possible, to maintain a substantially sterile environment on the interior thereof, regardless of whether the contents of the cart are pre-packaged or not. In addition, it would be highly beneficial if a cover were developed that were adequately structured or reinforced to the extent of significantly reducing the possibility that such a cover will be torn or ruptured which is quite possible as deliveries are made, and which would, thereby compromise the sterile environment under the cover, i.e., the interior portions of the cart and its contents. It would also be highly beneficial if a cover of the type referred to above were developed that could further aid in the maintenance of a substantially sterile environment by being formed of a flexible, strong, [hyper] hypo-allergenic material which, in addition, is capable of being selectively oriented in either a collapsed, stored position or an extended, operative position wherein the operative position includes a hollow interior dimensioned to substantially

cover the top and exposed sides or faces of the cart. Of course, any such cover should enable a person to easily access the contents of the cart, albeit in somewhat of a restricted manner, so as to reduce exposure of the interior portions of the cart under the cover, as well as its contents to the surrounding environment.--

The paragraph beginning at line 12 of page 5 has been amended as follows:

--The present invention is intended to address these and other needs which remain in the art, and is directed towards a cover assembly of the type designed to overlies and substantially enclose a delivery cart or like structure, such that the cart and the contents thereof are enclosed and protected. The cover assembly of the present invention is made from a flexible, yet relatively strong and substantially protective material and in one embodiment, to be described in greater detail hereinafter, is made from a [hyper] hypo-allergenic material so as to maintain an at least partially sterile environment on the interior of the enclosure in which the cart is positioned. The [hyper] hypo-allergenic material from which the enclosure of the cart assembly of the present invention is formed may be of the type commercially available under the trademark STAPH-CHEK,[™] registered in the U.S. Patent and Trademark Office, namely, Reg. No. 802,786, and manufactured by Herculite Products, Inc., a corporation of New York with offices in New York City and possibly in Newark, New Jersey, as well. Naturally, equivalent [hyper] hypo-allergenic materials can be utilized and are applicable

for forming the enclosure of the subject cover assembly, particularly when the delivery cart of the type referred to is used in hospitals or like medical facilities for the delivery of a plurality of different products or items, at least some of which are intended to be maintained in an at least partially sterile environment. However, it is emphasized that the cover assembly of the present invention does not have to be formed of a [hyper] hypo-allergenic material, as such an embodiment would still be considered to fall within the spirit and scope of the present invention.--

The paragraph beginning at line 9 of page 9 has been amended as follows:

--The cover assembly of the present invention preferably also comprises a storage assembly, including one or more pockets, located at predetermined positions, ideally located both on the exterior and interior of the cart and which are specifically structured for the containment of various items. More specifically, the storage assembly of the present invention includes at least a first pocket or compartment disposed within the hollow interior of the enclosure in a location which is readily accessible. This first pocket or compartment is also preferably formed of a [hyper] hypo-allergenic material, as discussed above, and is dimensioned and configured to removably contain predetermined items or specific contents, which are best maintained in as sterile an environment as possible, during the delivery procedure. Accordingly, this first pocket or compartment serves to isolate its contents from the cart, also

disposed on the interior of the enclosure, and from the exterior of the enclosure until it is delivered to its intended destination. The storage assembly may also include one or more additional pockets or compartments mounted on the exterior surface of the sidewall structure which are specifically structured to removably contain a variety of other products, items or contents, as desired.--

The paragraph beginning at line 19 of page 10 has been amended as follows:

--Figure 2 is a detailed view in partial [cut away] cutaway of one portion of the embodiment of Figure 1.--

The paragraph beginning at line 21 of page 10 has been amended as follows:

--Figure 3 is a detailed view in partial [cut away] cutaway of another portion of the structure of the embodiment of Figure 1.--

The paragraph beginning at line 25 of page 10 has been amended as follows:

--Figure 5 is a perspective view in [cut away] partial cutaway showing interior portions of a preferred cover assembly according to the present invention.--

The paragraph beginning at line 9 of page 11 has been amended as follows:

--As shown in the accompanying drawings, the present invention relates to a cover assembly such as that generally indicated as 10 in Figure 1. The cover assembly 10 includes an enclosure generally indicated as 12 comprising a sidewall 14 disposed in substantially surrounding relation so as to [from] form a hollow interior of the enclosure 12. Further, the enclosure 12 includes a top 16 secured to the sidewall 14 such that the sidewall 14 extends in a downwardly depending relation to the top 16. The sidewall 14 may include a plurality of individual panels or sides or alternatively, may include a continuous structure of sufficient dimension to [overly] overlie and cover substantially the entire outer portion or plurality of sides of a mobile cart generally indicated as 20.--

The paragraph beginning at line 5 of page 13 has been amended as follows:

--As set forth above, one feature of the present invention is the at least partial isolation of the hollow interior of the enclosure 12 in order maintain a substantially sterile environment therein for the various items or contents separately stored on cart 20 as they are being delivered. Therefore, the cover assembly 10 of the present invention includes a closure structure, generally indicated as 30, preferably in the form of a flexible material drape 32, which may have a variety of configurations but which is specifically dimensioned and configured to be selectively disposed in covering relation to the access opening 26. Preferably, the

drape 32 is secured by a connecting seam or junction 34 to the top 16 or to the sidewall 14 and hangs downwardly therefrom into removably covering relation to the access opening 26. In addition, due at least in part to the flexible material from which the drape 32 is formed, it may be easily positioned between a completely closed position, defined by an overlying relation to an exposed face or portion of the cart 20, or a partially open position[ed] as depicted in Figure 1. Therefore, an advantage of utilizing a drape 32 as the closure structure is that only a portion of the hollow interior within the enclosure 12 may be exposed for removal or insertion of various items or contents from or into the cart 20, as required. It is, of course, to be noted that the drape 32 may be selectively positioned into an entirely open position in order to expose the entire, correspondingly positioned face or side of the cart 20, such as when the cart is being initially loaded for delivery or distribution of a plurality of different items.--

The paragraph beginning at line 22 of page 14 has been amended as follows:

--The closure assembly 10 of the present invention preferably also comprises a reinforcing assembly, which may be, but does not have to be, mounted both on the exterior and interior surfaces of the enclosure 12. The purpose of the reinforcing assembly is to provide protection against physical damage to various parts of the enclosure 12; such as when it inadvertently engages a wall, door,

becomes entangled with another object, surface, etc. as the cart and closure assembly 10 travel along the intended delivery or distribution route. The reinforcing assembly includes a plurality of reinforced portions such as, but not limited to, corner pads 40 formed on the top 16. The corner pads 40 serve to protect the enclosure against stress or forces exerted on the cover assembly 10 in a downward direction as the top 16 is disposed in overlying, covering and at least partially engaging relation to an upper portion of the cart 20. For example, the corner pads 40 may be positioned on the top 16 so as to overlie the corners of a support frame of the cart, which serve to support the enclosure 12 in the intended overlying, surrounding relation to the cart. The reinforcement assembly may comprise alternatively [of] or in addition, a plurality of reinforced portions 42 disposed at each of the corners of the enclosures such as at the lower end of the drape 32 so as to provide reinforcing protection as well as serve as additional "weights", due to their structure. The additional weight facilitates the downwardly depending orientation of the preferred drape 32 in its intended position over the corresponding face of the cart 20 and into its closed position in covering relation to the access opening 26. As shown in Figure 2, the reinforced portions 42 are preferably mounted on the interior surface 32' of the drape 32 adjacent certain ones of the connector components 34'. The provision of the reinforced portions 42 further serve to add protection against the pulling force exerted on the

drape as it is disconnected from correspondingly positioned connector members or components 34 mounted on the exterior of the sidewall 14, as shown in Figure 1 and discussed above. Correspondingly positioned reinforced portions 44 may also be mounted on the interior or exterior surface at the lower end of the exposed face of the sidewall 14' in which the access opening 26 is formed. These correspondingly positioned reinforced portions 44 are also provided to resist the pulling forces exerted on the sidewall segment 14', as the drape 30 is pulled into its open or at least partially open position as represented in Figure 1.--

The paragraph beginning at line 3 of page 17 has been amended as follows:

--With reference to Figures 2 through 4, 6 and 7, each of the reinforced portions, including the peripheral seam 48 as well as the other reinforced portions 40 and 42, are primarily defined by a thickened material portion, comprising at least one additional layer of material being affixed in overlying relation to a layer of material defining the corresponding portion of the enclosure 12. For example, in the sectional views of Figures 6 and 7, one of the corner pads 40 is defined by a thickened material portion including a layer of material representing the corner pads 40 [it-self,] being disposed in secured relation over (or under) the layer of material defining the top 16. Similarly in Figure 7, the reinforced portion 42 is preferably disposed in fixed relation over the interior

surface 32' of the drape 32 immediately adjacent to certain ones of the connector components 34'.--

The paragraph beginning at line 2 of page 25 has been amended as follows:

--A protective cover assembly [designed to enclose but provide access to] for a cart [as well as the] and it's contents [thereof, wherein the cart is typically but not exclusively] of the type used in hospitals and like medical facilities for the temporary storage and delivery of a plurality of items [at least a some of] which should be maintained in a substantially sterile environment [until delivered to an intended destination]. The cover assembly comprises an enclosure formed from a flexible, preferably [hyper] hypo-allergenic material [which is selectively oriented in either a collapsed, stored position or an expanded, operative position and being] dimensioned to receive substantially the entire cart therein. [within the interior when the enclosure is in its expanded, operative position.] A plurality of reinforced portions are secured to the enclosure [at a plurality of spaced apart locations] and are structured to prevent rupture or other physical damage thereto. [to the enclosure which would compromise the substantially sterile environment maintained within the interior of the enclosure.] A storage assembly [is provided in the form] comprises one or more compartments including at least one interior pocket disposed and structured [to maintain predetermined items in an isolated position

THIS PRODUCT IS MADE WITH

staphCHEK[®]

**Fire Resistant, Bacteria Resistant*
Antistatic Fabric**

Fluidproof • Exceptionally Strong
Comfortable • Easy to Clean • Non-allergenic
Resistant to Stains, Tearing and Abrasion

*To Protect the Fabric

CARE AND MAINTENANCE

SOILS OR STAINS: Only neutral soap suds and luke warm water required. Rinse with water. DO NOT USE HARSH DETERGENTS, CLEANSERS, OR SOLVENTS.

HARD TO CLEAN SPOTS: Use standard liquid vinyl cleansers and/or soft bristle brush. Pre-soak if needed.

DISINFECTION: Dilute disinfectants and/or germicides as specified on manufacturer's label. USE ONLY IN THOSE DILUTIONS RECOMMENDED BY THE MANUFACTURER.

LAUNDERING IS NOT RECOMMENDED

© 1998 Herculite Products, Inc.
York, Pennsylvania 17405

STAPH-CHEK[®] is a registered trademark of
Herculite Products, Inc., York, PA.

EXHIBIT 1